82-484

No.

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CLERK

IN THE

# Supreme Court of the United States

October Term, 1982

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WILLIAM A. ALBAUGH,

*Petitioner,*

v.

ESTELLE G. WOOD, *ET AL.*

*Respondents.*

---

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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WILLIAM A. ALBAUGH
P.O. Box 100
Mt. Rainier, MD 20712
(301) 277-0246

*Petitioner, PRO SE*

THE CASILLAS PRESS, INC. – 1717 K Street N.W. – Washington, D.C. – 223-1230

## QUESTION PRESENTED

Whether the Federal Enclave now known as the District of Columbia is a part of the State of Maryland?

## TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... i

OPINION BELOW ..... 1, 11a

JURISDICTION ..... 2

CONSTITUTIONAL PROVISIONS INVOLVED ..... 2

STATEMENT OF THE CASE ..... 2

REASON FOR GRANTING THE WRIT ..... 4

THE DECISION OF THE FOURTH CIRCUIT FAILS TO COMPLY WITH THE CONSTITUTIONAL DIRECTIVE IN ARTICLE I, SECTION 8, CLAUSE 17 WHICH STATES THAT PLACES PURCHASED WITH THE CONSENT OF THE STATE LEGISLATURE SHALL BE IN THAT STATE ..... 4

CONCLUSION ..... 5

APPENDIX ..... 1a

I. THE MARYLAND CONDEMNATION ACT (CMD. ACT, DECEMBER 22, 1790, Ch. 44) ..... 1a

II. SALES AGREEMENT WITH MAJOR LAND OWNERS (SENATE DOCUMENT No. 178, 75th CONGRESS, 3D SESSION) ..... 3a

III. PICTURE OF LAND PURCHASED (SENATE DOCUMENT No. 178) ..... 7a

IV. ORDER DISMISSING COMPLAINT, FILED JANUARY 29, 1982 ..... 8a

V. JUDGMENT, FILED FEBRUARY 1, 1982 ..... 11a

VI. ORDER AFFIRMING DISMISSAL, FILED APRIL 22, 1982 ..... 12a

Page

**Constitutional Provisions and Statutes:**

Constitution, Art. I, Sec. 8, Cl. 17 ..... 2, 4

Constitution, Art. IV, Sec. 2 ..... 2

28 U.S.C. § 1254 ..... 2

**Cases Cited:**

*Albaugh v. Tawes*,
233 F.Supp 576 (D. MD), (1964) ..... 3

*Evans v. Cornman*,
398 U.S. 419 (1970) ..... 4

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WILLIAM A. ALBAUGH,

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

---

The petitioner, William A. Albaugh, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

## OPINION BELOW

The opinion of the Court of Appeals was entered on April 22, 1982 (App. 12a). The opinion of the District Court for the District of Maryland was entered on January 29, 1982 (App. 8a).

## JURISDICTION

The judgment of the Court of Appeals was entered on April 22, 1982 (App. 12a). The jurisdiction of this Court is invoked under Constitution, Art. IV, Sec. 2 and under 28 U.S.C. § 1254.

## CONSTITUTIONAL PROVISIONS INVOLVED

Constitution, Art. I, Sec. 8, Cl. 17:

> (The Congress shall have power) . . . to exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority (exclusive legislation) over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;

Constitution, Art. IV, Sec. 2:

> The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states . . .

## STATEMENT OF THE CASE

Petitioner, William A. Albaugh, originally filed this action on October 19, 1981 in the Circuit Court of Maryland for Prince George's County and it was later refiled on November 25, 1981 in the United States District Court for the District of Maryland on the grounds that that court had original jurisdiction. Petitioner together with his wholly owned DC corporation, Latent Energy Storage Co.,

Inc., brought suit against the defendants, Supervisors of Elections of Prince George's County, Maryland Government, DC Government, and the U.S. Government, for failing to recognize the Federal Enclave now known as the District of Columbia as a part of the State of Maryland for election and tax purposes. On the suggestion of the District Court, petitioner agreed to withdraw the company as a plaintiff party for the time being because it was not presently represented by a lawyer.

In 1981 petitioner was a resident citizen of the District of Columbia who stopped paying taxes on his estimated 1981 income as soon as the Maryland election officials refused to register him to vote in Maryland Congressional Elections. Early in 1982 petitioner moved his legal residence to 2600 Queens Chapel Rd., #808, Hyattsville, Maryland 20782, restored his Prince George's County voting registration, and in April became an official candidate for the Republican nomination for U.S. Senator from Maryland.

On January 29, 1982 the District Court entered an order (App. 7a) dismissing the case with prejudice on the grounds that the Judge thought the matter had been sufficiently adjudicated in *Albaugh v. Tawes,* 233 F. Supp. 576 (D. Md.) (1964) not to mention many other cases. On April 22, 1982 the Court of Appeals affirmed this judgment (App. 12a).

On September 7, 1982 the United States Court of Appeals for the District of Columbia extended the stay in *Albaugh v. Chapman* (Director of the Bureau of Census), et al., No. 82-1045 pending the disposition of this case.

## REASON FOR GRANTING THIS WRIT

**THE DECISION OF THE FOURTH CIRCUIT FAILS TO COMPLY WITH THE CONSTITUTIONAL DIRECTIVE IN ARTICLE I, SECTION 8, CLAUSE 17 WHICH STATES THAT PLACES PURCHASED WITH THE CONSENT OF THE STATE LEGISLATURE SHALL BE IN THAT STATE.**

The Supreme Court's ruling in *Evans v. Cornman*, 398 U.S. 419 (1970) upheld the Constitutional stipulation that land purchased in the State of Maryland with the consent of the Maryland Legislature shall be part of the State of Maryland and the Supreme Court held the resident citizens of the NIH federal enclave are Maryland citizens for purposes of voting.

In this case the Maryland Assembly not only gave its consent for the government to purchase land in Maryland but gave the U.S. Government a special condemnation authority in Maryland Act of 1790, ch. 44, passed December 22, 1790 (App. 1a) to guarantee the land could be purchased cheaply if not stolen. On March 30, 1791 the major land owners in the proposed Federal City signed a mutual deed of trust turning over all their lands (App. 3a) to the United States Government.

Of the roughly 6,000 acres purchased, more than half was taken for streets with no compensation to the original land owners. About 600 acres was earmarked for Federal buildings constituted a Federal enclave which had to remain within the boundary of the State of Maryland according to the provisions of Constitution, Art. I, Sec. 8, Cl. 17 which provided:

> "(The Congress shall have power) . . . to exercise like authority (exclusive legislation) over all places purchased by the consent of the

> Legislature of the State in which the same shall be, for . . . other needful buildings;"

Petitioner submits that a reasonable interpretation of this constitutional provision requires that this Federal Enclave and all others established by purchase must remain within the boundary of the state they were in at the time of purchase. Obviously, the author of the Constitution thought it was possible for a Federal Enclave to be under the power of Congress to exercise exclusive legislation at the same time that the enclave was a part of a state. Since that part of the District of Columbia taken by cession by the United States Government rather than by purchase must be governed by like Federal authority, it follows that all the District of Columbia must be a part of the State of Maryland.

## CONCLUSION

WHEREFORE petitioner prays that the Court will either grant this writ or remand the case to the District Court with the instruction that the District of Columbia be treated exactly like any other Federal Enclave established in the State of Maryland.

Respectfully submitted,

WILLIAM A. ALBAUGH
P.O. Box 100
Mt. Rainier, MD 20712
(301) 277-0246

*Petitioner, Pro Se*

## APPENDIX A

John Eager Howard, Esquire, Governor.

### CHAP. XLIV.

An ACT to condemn land, if necessary, for the public buildings of the United States.

WHEREAS it may happen, that within the district defined, limited and located, between the mouth of the Eastern Branch and Conococheague, for the permanent seat of the government of the United States, part of the land in the said district proper and necessary to be laid out for the erection of the public buildings, may be owned by persons who may refuse to accept a reasonable price therefor, or by married women, or by persons under age or nonresidents of this state,

II. Be it enacted, *by the General Assembly of Maryland,* That in case the proprietors of any land, within the district aforesaid, which may be necessary for the erection of public buildings, and for other public purposes, shall refuse to sell to, or accept a reasonable compensation for the same from, the commissioners appointed or to be appointed by the president of the United States, or shall be married women, or under age, or nonresidents, or persons unknown or not to be found, that the commissioners aforesaid, or any two of them, be and hereby are authorised to order the sheriff of the county in which such land shall lie, to summon not less than twelve, nor more than twenty-three, inhabitants of his county, not interested or related to persons interested, qualified by law to be grand jurors of the general court, to appear on the land; and the said sheriff shall impannel and swear as many of the said jurors as shall appear, not less than twelve, to inquire of the owners of the said land, and the value of the said land,

and the said sheriff shall return the said inquest to the clerk of his county, to be recorded; and thereupon the owners of the said land shall be entitled to receive such valuation; and after such inquest, the said land shall for ever belong to the United States: Provided, that not above the quantity of one hundred and thirty acres, shall be liable to be condemned in virtue of this act. (Passed December 22, 1790)

## APPENDIX B

## TERMS OF ORIGINAL AGREEMENT

The terms of the sale of land to the Government were agreed to on March 30, 1791, under which the original owners agreed to convey to the United States Government, free of cost, such portions of their farms as were needed for streets, parks, and other public reservations; and to sell such land as was needed for Government buildings and public improvements at £25 per acre (about $67). The remaining land was to be laid out in building lots and apportioned equally between the Federal Government and the original owners. Rufus R. Wilson, in Washington, the Capital City, says:

> In this way, without advancing a dollar and at a total cost of $36,000, the Government acquired a tract of 600 acres in the heart of the city. The 10,136 building lots assigned to it ultimately proved to be worth $850,000, and now represent a value of $70,000,000. Shrewd financier as he was, it is doubtful if Washington ever made another so good a bargain as that with Burnes and his neighbors.

The following is a copy of the agreement:

### THE AGREEMENT OF PRESIDENT WASHINGTON WITH THE ORIGINAL PROPRIETORS

> We, the subscribers, in consideration of the great benefits we expect to derive from having the Federal City laid off upon our Lands, do hereby agree and bind ourselves, heirs, executors, and administrators, to convey, in Trust, to the President of the United States, or Commissioners, or such person or persons as he shall

appoint, by good and sufficient deeds, in Fee simple, the whole of our respective Lands which he may think proper to include within the lines of the Federal City, for the purposes and on the conditions following:

The President shall have the sole power of directing the Federal City to be laid off in what manner he pleases. He may retain any number of Squares he may think proper for public Improvements, or other public Uses, and the lots only which shall be laid off shall be a joint property between the Trustees on behalf of the public, and each present proprietor, and the same shall be fairly and equally divided between the public and the Individuals, as soon as may be, after the City shall be laid off.

For the streets the proprietors shall receive no compensation; but for the squares or Lands in any form, which shall be taken for public buildings, or any kind of public improvements, or uses, the proprietors, whose lands shall be so taken, shall receive at the rate of twenty-five pounds per acre, to be paid by the public.

The whole wood on the Lands shall be the property of the proprietors.

But should any be desired by the president to be reserved or left standing, the same shall be paid for by the public at a just and reasonable valuation, exclusive of the twenty-five pounds per acre to be paid for the land, on which the same shall remain.

Each proprietor shall retain the full possession and use of his land, until the same shall be sold and occupied by the purchasers of the Lots laid out thereupon, and in all cases where the public arrangements as to streets, lotts, etc., will admit of it, each proprietor shall possess his buildings and other improvements, and graveyards, paying to the public only one-half the present estimated value of the Lands, on which the same shall be, or twelve pounds ten shillings per acre. But in cases where the arrangements of the streets, lotts, squares, etc., will not admit of this, and it shall become necessary to remove such buildings, improvements, etc., the proprietors of the same shall be paid the reasonable value thereof, by the public.

Nothing herein contained shall affect the Lotts which any of the parties to this Agreement may hold in the Towns of Carrollsburgh or Hamburgh.

In witness whereof we have hereunto set our hands and Seals, this thirtieth day of March, 1791.

Signed & sealed in presence of us—Mr. Thos. Beall, making an exception of the Lands he sold Abraham Young not yet conveyed.

Witness to all the subscribers including William Young
William Bayly
William Robertson
John Suter
Samuel Davidson witness to Abraham Young's signing
Benj. Stoddert witness to Edward Peirce's signing
Joseph E. Rowless for Jno. Waring
Wm. Deakings Junr. for Wm. Prout & William King as attorney in fact.

Signed

| | |
|---|---|
| Robert Peter | (Seal) |
| David Burnes | (Seal) |
| Jas. M. Lingan | (Seal) |
| Uriah Forrest | (Seal) |
| Benj. Stoddert | (Seal) |
| Notley Young | (Seal) |
| Dan. Carroll of Dn. | (Seal) |
| Overton Carr | (Seal) |
| Thos. Beall of Geo. | (Seal) |
| Charles Beatty | (Seal) |
| Anthony Holmead | (Seal) |
| Wm. Young | (Seal) |
| Edward Peirce | (Seal) |
| Abraham Young | (Seal) |
| James Peirce | (Seal) |
| William Prout | (Seal) |
| Robert Petter as attorney in fact for Eliphas Douglas. | (Seal) |
| Benj. Stoddert for Jno. Waring by written authority from Mr. Waring. | (Seal) |
| William King | (Seal) |

(Source: A Manual on the Origin and Development of Washington, By H. Paul Caemmerer, 75th Congress, 3d Session, Senate Document No. 178, U.S. Gov. Printing Office, Washington, 1939)

## APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

| | | |
|---|---|---|
| LATENT ENERGY STORAGE CO., INC., et al. | * | |
| v. | * | Civil No. Y-81-3046 |
| ESTELLE G. WOOD, et al. | * | |

Filed: January 29, 1962 (1982)

William A. Albaugh, Mt. Rainier, Maryland, pro se.

James A. Rothschild, Esquire, Assistant United States Attorney, Baltimore, Maryland, counsel for the defendant United States Government.

Susan K. Gauvey, Esquire, Assistant Attorney General for the State of Maryland, Baltimore, Maryland, counsel for the defendant State of Maryland.

Judith W. Rogers, Esquire, Washington, D.C., John H. Suda, Esquire, Washington, D.C., and Michael E. Zielinski, Esquire, Washington, D.C., counsel for the defendant District of Columbia Government.

Ronald Willoner, Esquire, College Park, Maryland, Counsel for the defendant Board of Election Supervisors.

YOUNG, United States District Judge.

## MEMORANDUM AND ORDER

Plaintiffs[1] have brought this complaint against the defendants,[2] members of the Supervisors of Elections of Prince George's County, the Government of the State of Maryland, the Government of the District of Columbia, and the United States Government, for maladministration of the Maryland Congressional Election Law, for refusing to register plaintiff William A. Albaugh to vote in the appropriate Maryland Congressional Election, subjecting plaintiffs to taxation without representation, and changing the geographical boundaries of Maryland without the constitutionally required legal authorization. All defendants have moved to dismiss on grounds of *res judicata*. In addition, the members of the Supervisors of Elections have counterclaimed for attorneys' fees and costs for vexatious litigation.

The issue, which the individual plaintiff seeks once more to have adjudicated, of whether the District of Columbia is still legally part of the state of Maryland, has been authoritatively decided against Albaugh. *Albaugh v. Tawes,* 233 F. Supp. 576 (D. Md.), *aff'd,* 379 U.S. 27, *reh. denied,* 379 U.S. 940 (1964). Since that initial decision, Albaugh has filed numerous suits seeking a different judgment. One of the more recent attempts to litigate these issues was in this Court, *Albaugh v. United States, et al.,* K-78-2335 (D. Md., filed December 26, 1979). In that

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[1]The corporate plaintiff is unrepresented since the individual plaintiff is not an attorney and cannot represent the corporation. However, rather than deal with this point, the entire case will be resolved by the Order herein.

[2]The complaint was originally filed in the Circuit Court of Maryland for Prince George's County. The United States removed the case to federal court.

case, Chief Judge Kaufman dismissed the case on the ground of *res judicata*, chronicling in detail the history of plaintiff's litigation of this issue. This Court rests on the well-reasoned opinion of Judge Kaufman. Plaintiff's claims are barred by the doctrine of *res judicata*.

Some of the defendants have filed a counterclaim for costs and attorneys' fees, claiming the suit was brought without substantial justification. The court declines to award attorneys' fees and costs in the instant case, but the plaintiff is hereby put on notice that a subsequent suit based on the same issue against the same defendants will be considered vexatious and appropriate costs and fees will be assessed.

For the above reasons, it is this 29th day of January, 1982, by the United States District Court for the District of Maryland, ORDERED:

1. That plaintiffs' suit BE, and the same IS, hereby DISMISSED with prejudice; and

2. Defendants' cross-claim for costs and attorneys' fees BE, and the same IS, hereby DISMISSED.

/s/

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

| | | |
|---|---|---|
| LATENT ENERGY STORAGE CO., INC., and WILLIAM A. ALBAUGH | • | |
| v. | • | Civil No. Y-81-3046 |
| ESTELLE G. WOOD, President; MARY E. DEVANEY, CHARLES C. DEEGAN, Supervisors of Elections of Prince George's County; STATE OF MARYLAND GOVERNMENT: DISTRICT OF COLUMBIA GOVERNMENT: and UNITED STATES GOVERNMENT | • | |

JUDGMENT

In accordance with the Memorandum and Order of the Honorable Joseph H. Young dated January 29, 1982, filed in the above entitled case, it is

ORDERED AND ADJUDGED:

That Judgment be, and the same is, hereby entered in favor of defendants against plaintiffs.

Dated at Baltimore, Maryland this 1st day of February, 1982.

PAUL R. SCHLITZ, Clerk

By: /s/
R. Bruce McElhone
Deputy Clerk

## APPENDIX D

## UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

**No. 82-1086**

Latent Energy Storage Co., Inc.,

Plaintiff,

and

William A. Albaugh,

Appellant,

v.

Estelle G. Wood, President; Mary E. Devaney, Charles C. Deegan, Supervisors of Elections of Prince George's County; State of Maryland Government; District of Columbia Government; and United States Government,

Appellees.

---

Appeal from the United States District Court for the District of Maryland, at Baltimore. Joseph H. Young, District Judge.

---

Submitted: March 17, 1982 Decided: April 22, 1982

---

Before RUSSELL, HALL, and MURNAGHAN, Circuit Judges.

---

(William A. Albaugh, Appellant Pro Se. Ronald Willoner, Willoner, Calabrese & Rosen, for Appellees Board of Elections Supervisors; Stephen H. Sachs, Attorney General, Susan K. Gauvey, Assistant Attorney General, for Appellee State of Maryland; J. Frederick Motz, United States Attorney, James A. Rothschild, Assistant United States Attorney, for Appellee United States Government.)

---

PER CURIAM:

Appellant William Albaugh brought suit against these defendants challenging the right of the District of Columbia to tax his corporation and the refusal of Maryland officials to allow him to vote in that state's elections. At the time he filed the suit, Albaugh was resident of the District and his corporation was located within the District's geographical boundaries.

The contention underlying Albaugh's claim is that the part of the District in which he resides was never validly transferred from the State of Maryland. The district court ruled that numerous decisions adverse to Albaugh on this very issue barred presentation of the claim yet again. See *Albaugh v. Tawes*, 233 F. Supp. 576 (D. Md.), *aff'd*, 379 U.S. 27 (1964); *Albaugh v. United States*, No. K-78-2335 (D. Md. 1979); *Albaugh v. United States*, No. T-76-378 (D. Med. 1976); *Albaugh v. Mandel*, No. 74-1282 (D.D.C. 1974), *aff'd*, No. 74-2110 (D.C. Cir., May 9, 1975), *cert. denied*, 423 U.S. 935 (1975); *Albaugh v. Agnew*, No. 19599 (D. Md. 1968). We agree with the decision reached by the district court, and we caution Albaugh to heed that court's warning that costs and attorneys' fees may be im-

posed against him if he continues to prosecute this same claim time and time again.

The record and other materials before this Court indicate that oral argument would not aid the decisional process. We therefore dispense with oral argument and affirm the judgment of the district court.

Supreme Court, U.S.
FILED
OCT 21 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-484

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

WILLIAM A. ALBAUGH,

*Petitioner,*

v.

ESTELLE G. WOOD, ET AL.,

*Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STEPHEN H. SACHS,
Attorney General of Maryland,
SUSAN K. GAUVEY,
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Baltimore, Maryland 21202,
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Attorneys for Respondent
State of Maryland.

## QUESTION PRESENTED FOR REVIEW

Was the United States Court of Appeals for the Fourth Circuit correct in dismissing petitioner's claim that the District of Columbia is part of the State of Maryland on the ground that the claim is barred by the doctrine of *res judicata*?

## INDEX

## TABLE OF CONTENTS


| | Page |
|---|---|
| Preliminary Comment | 1 |
| Opinions Below | 2 |
| Jurisdiction | 3 |
| Constitutional Provisions Involved | 3 |
| Statement of the Case | 4 |
| Argument | 7 |
| Conclusion | 12 |
| Appendix A | 14 |
| Appendix B | 18 |


## TABLE OF AUTHORITIES

### Cases


| | |
|---|---|
| Aetna Life Insurance Co. v. Haworth, 300 U.S. 227 (1937) | 12 |
| Albaugh v. Agnew, No. 19599 (D. Md. Sept. 10, 1968) | 8, 10 |
| Albaugh v. Chapman, No. 81-2753 (D.D.C. Dec. 17, 1981) | 5, 6 |

Albaugh v. Mandel, No. 74-1282 (D.D.C. Nov. 19, 1974), aff'd No. 74-2110 (D.C. Cir. May 9, 1975), cert denied, 423 U.S. 835 (1975)..... 8, 9, 10

Albaugh v. Tawes, 233 F.Supp. 576 (D.Md. 1964), aff'd, 379 U.S. 27 (1964), reh. denied, 379 U.S. 940 (1964)..... 8, 10, 12

Albaugh v. United States Government, No. T-76-378 (D.Md. 1976), aff'd, No. 76-1549 (4th Cir. Dec. 23, 1976)..... 9, 11

Albaugh v. United States Government, No. K-78-2335 (D.Md. Dec. 26, 1978)..... 10

Cromwell v. County of Sac, 94 U.S. 351 (1877)..... 9

Evans v. Cornman, 398 U.S. 419 (1970)..... 10

Federated Dept. Stores, Inc., 452 U.S. 394 (1981)..... 9

Great Western Sugar Co. v. Nelson, 442 U.S. 92 (1979)..... 12

Montana v. U.S., 440 U.S. 147 (1979)..... 9

## Constitutional Provisions

United States Constitution:
Article I, Sec. 8, Cl. 17..... 3
Article IV, Sec. 2..... 4

## Statute

28 U.S.C., §1254..... 3

## Treatises

1B James Moore, Federal Practice, ¶0.409[1] [1982)..... 9

NO. 82-484

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM A. ALBAUGH,
Petitioner

v.

ESTELLE G. WOOD, ET AL.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

# RESPONDENT'S BRIEF IN OPPOSITION

## PRELIMINARY COMMENT

The Respondent, State of Maryland, respectfully requests that this Court deny the peititon for writ of certiorari, seeking review of the Fourth Circuit's opinion in this case.

## OPINIONS BELOW

The United States District Court for the District of Maryland, in a Memorandum Opinion of January 29, 1982 (Latent Energy Storage Co. v. Wood, No. Y-81-3046), dismissed Petitioner's suit with prejudice on the ground the claim was barred by the doctrine of res judicata, and warned Petitioner that costs and attorneys' fees would be imposed against him if he persists in prosecuting the same claim. (Appendix C, Albaugh's Petition.) The United States Court of Appeals for the Fourth Circuit, in a per curiam opinion of April 22, 1982 (No. 82-1086), affirmed the decision of the district court and reiterated the warning of the District Court that costs and attorneys' fees would be imposed if the suit were brought again. (Appendix D, Albaugh's Petition).

The Memorandum Order of the United States District Court for the District of Maryland of December 26, 1979, dismissing Petitioner's complaint with prejudice, in a suit against the United States Government and other governmental units similar to the case at bar, is included as Appendix A to this brief. The Memorandum Order of the United

States District Court for the District of Columbia of December 17, 1981, dismissing Petitioner's claim with prejudice in a suit raising the same issue as the instant case, is included as Appendix B to this brief.

## JURISDICTION

Petitioner has invoked the jurisdiction of this Court pursuant to 28 U.S.C. §1254 and United States Constitution, Art. IV, Sec. 2.

## CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution:
Article I, Sec. 8, Cl. 17:

(The Congress shall have power) . . . to exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

Article IV, Sec. 2:

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

## STATEMENT OF THE CASE

Petitioner, William Albaugh, brought this suit on October 19, 1981, in the Circuit Court of Maryland for Prince George's County to challenge the legality of the 1801 cession of part of Maryland to the United States for the purpose of establishing the District of Columbia as the seat of the federal government. Upon petition of one of the defendants, the United States, the case was removed to the United States District Court for the District of Maryland. The parties to the suit were Petitioner, then a resident of the District of Columbia, and his wholly owned corporation, Latent Energy Storage Co., whose place of business is the District of Columbia. Defendants were the Supervisors of Elections of Prince George's County, the State of Maryland, the District of Columbia, and the United States.

Mr. Albaugh claimed that the cession of land for the establishment of the District of

Columbia was never authorized by an act of the Maryland Legislature, and that his constitutional rights were therefore impaired by the State of Maryland's refusal to allow him to vote in Maryland Congressional elections. He further alleged that he had been taxed without representation because he paid more taxes as a resident of the District of Columbia than he would have paid as a Maryland resident. Petitioner has subsequently moved to Maryland, thereby mooting the issues raised in the suit. (Albaugh's Petition, p. 3.) He has also agreed to remove his corporation, Latent Energy Storage Company, as party plaintiff to the suit, because the corporation was not represented by counsel.

In a Memorandum and Order of January 29, 1982, Judge Young of the District Court dismissed the case with prejudice on the grounds of res judicata. Petitioner filed an appeal in the United States Court of Appeals for the Fourth Circuit, which affirmed the decision of the district court on April 22, 1982.

Petitioner filed an identical case, Albaugh v. Chapman, Civil Action No. 81-2753, in the United States District Court for the District of Columbia. In a Memorandum Order

of December 17, 1982, Judge Green dismissed the case with prejudice. Petitioner's appeal to the United States Court of Appeals for the District of Columbia in Albaugh v. Chapman has been stayed pending the disposition of this case. As in the instant case, in Albaugh v. Chapman Petitioner claims that the illegal cession of land for establishment of the District of Columbia has resulted in erroneous census reports for Maryland, rendering invalid all subsequent Maryland elections. He further claims that, because of the illegality of the cession of land for the District of Columbia, he should be relieved of the obligation of paying taxes to the District of Columbia.

The lack of any legal basis for Petitioner's claim has been stated repeatedly by the courts, including this Court. A more detailed description of the long history of Petitioner's litigation of the cession of land for the District of Columbia can be found in the Memorandum and Order of Judge Kaufman appended to this brief. (Appendix A)

## ARGUMENT

### THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT WAS CORRECT IN DISMISSING PETITIONER'S CASE ON THE GROUND THAT THE CLAIM IS BARRED BY THE DOCTRINE OF RES JUDICATA.

Once again Petitioner seeks to bring the same suit against the same parties on issues identical in every way to those which have repeatedly been decided by this Court and the courts below in favor of Respondents.

The Court cannot examine the involved history of Petitioner's efforts to try the question now before it without concluding that the Court of Appeals for the Fourth Circuit was correct in affirming the ruling of the United States District Court for the District of Maryland that the numerous decisions adverse to Mr. Albaugh on the same issue barred relitigation of the claim.

A brief summary of the suits by means of which Mr. Albaugh has sought to lessen his own and his corporation's tax liability to the District of Columbia - the only real interest involved in this case - will suffice to show that there is no ground for granting his petition.

Mr. Albaugh filed an action similar to the instant case on June 9, 1964, against the Governor and the Secretary of the State of Maryland contesting the validity of the Maryland Senatorial primary election. He was denied relief on the merits by a three-judge district court in a per curiam opinion, Albaugh v. Tawes, 233 F.Supp 576 (D.Md. 1964). The District Court noted in its 1964 opinion that Mr. Albaugh had already raised the same issue several times before in cases in which the merits were not reached. This Court subsequently affirmed that judgment, per curiam, in Albaugh v. Tawes, 379 U.S. 27, reh. denied, 379 U.S. 940 (1964).

Petitioner raised issues similar to those in the case at bar in 1968 in Albaugh v. Agnew, Civil No. 19599 (D.Md. 1968), in which the court dismissed the case as "entirely without legal substance." Judge Kaufman's Memorandum and Order (Appendix A, p. 1.) In Albaugh v. Mandel, Civil No. 74-1282 (D.D.C. 1974), Mr. Albaugh instituted the same suit in the United States District Court for the District of Columbia, and the case was dismissed on the grounds of res judicata. The Court of Appeals of the District of Columbia affirmed this dismissal,

and this Court denied Mr. Albaugh's petition for writ of certiorari. Albaugh v. Mandel, 423 U.S. 835 (1975).

The suit was filed again in 1976, and again dismissed. Albaugh v. United States Government, Civil No. T-76-378 (D. Md. 1976). The United States Court of Appeals for the Fourth Circuit affirmed. No. 76-1549 (4th Cir. Dec. 23, 1976.)

The decision of the district court was correct and should be affirmed. In order for the doctrine of res judicata to be invoked, a valid judgment, usually in another action, between the same parties or their privies must have adjudged some matter with finality. 1B James Moore, Federal Practice, ¶0.409[1] (1982); Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394 (1981) on remand Brown v. Federated Dept. Stores, Inc., 653 F.2d 1266 (9th Cir. 1981); Montana v. United States, 440 U.S. 147, 153 (1979); Cromwell v. County of Sac, 94 U.S. 351, 352 (1877). It is clear from the history of this case outlined in Judge Kaufman's Memorandum, (Appendix A), that this case has been litigated to final judgment on several occasions. This is also not the first time the State of Maryland was a party. Albaugh v. United States

Government, Civ. No. K-78-2335 (D. Md. 1978). In several other cases, Albaugh v. Tawes, 233 F. Supp. 578 (D. Md. 1964), aff'd, 379 U.S. 27; Albaugh v. Mandel, et al., Civ. No. 74-1282, (D.D.C. 1974), and Albaugh v. Agnew, Civ. No. 19599 (D. Md. 1968), defendants included the Governor of Maryland as well as other State officials, who are "privies" of the State of Maryland in this case.

Even if the claim were not barred by the doctrine of res judicata, this petition for writ of certiorari should be denied because Petitioner's claim is meritless and has no legal basis. The legal theory on which Mr. Albaugh purports to rely is that if residents of the Federal enclave of National Institutes of Health are considered Maryland citizens for the purpose of voter registration, as was decided in Evans v. Cornman, 398 U.S. 419 (1970), it thereby follows that the cession of territory to the federal government for the establishment of the District of Columbia in 1801 was illegal, and that, as a consequence, all subsequent Maryland censuses, apportionments, and elections are invalid, and furthermore, that the District of Columbia has no power to tax its own residents.

The absurdity of these claims on their face is such as to merit no further comment. As the Court in Albaugh v. United States aptly noted:

> There is a real difference between residents of the District of Columbia and NIH residents. Congress has given certain voting rights to residents of the District; for additional rights, they and the plaintiff herein must look to Congress.

Appendix A, p. 3.

Even if the claim were not barred by the doctrine of res judicata, and even if the claim were not without legal basis, Mr. Albaugh's Petition should be denied on the grounds of mootness. As Mr. Albaugh points out on p. 3 of his petition, he moved his legal residence to Maryland early in 1981, thereby mooting his claim. Additionally, he has withdrawn his wholly owned corporation, Latent Energy Storage Company, as a party to the suit because the corporation is not represented by a lawyer. (Petitioner's Brief, p. 3.) Thus, there is no controversy for this Court's review.

In order for a case to be justiciable by an Article III Court, there must be a definite and concrete controversy, touching the legal relations of parties with adverse legal

interests. The controversy must be of such substance that it admits of specific relief through a decree of conclusive character. Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 240-241 (1937); Great Western Sugar Co. v. Nelson, 442 U.S. 92 (1979). As none of the reasons Mr. Albaugh gives for granting this petition meet these criteria, the petition should be denied.

## CONCLUSION

The Petition for a Writ of Certiorari to the Supreme Court of the United States in the case of Albaugh v. Wood should be denied because this Court has already decided the issues presented in this case in affirming the judgment of the United States District Court for the District of Maryland in Albaugh v. Tawes, 379 U.S. 27 (1964), where the identical issues of law and fact were adjudicated in favor of the State of Maryland. In the case at bar, Petitioner has raised no new legal issues which could make the case appropriate for a rehearing on writ of certiorari. Petitioner has stated no additional facts, circumstances, or legal theories in his petition which would raise his case beyond the level of a groundless claim, which

he has repeatedly pursued despite the admonishments of Judge Young of the United States District Court for the District of Maryland and the United States Court of Appeals for the Fourth Circuit that a subsequent suit based on the same issue against the same parties would be considered vexatious and would be grounds for awarding appropriate costs and fees to Respondents.

Respectfully submitted,

Stephen H. Sachs
Attorney General of Maryland

Susan K. Gauvey
Assistant Attorney General

Attorneys for Respondent
State of Maryland

IN THE UNITED STATES DISTRICT C
FOR THE DISTRICT OF MARYLAN

APPENDIX A

RECEIVED
JAN 8 1980
CIVIL DIVISION
CORPORATION COUNSEL OFFICE

WILLIAM A. ALBAUGH

V. : CIVIL NO. K-78-2335

UNITED STATES GOVERNMENT
ET AL.

MEMORANDUM AND ORDER

Plaintiff, proceeding pro se, originally filed this suit in the Circuit Court for Anne Arundel County, Maryland, challenging the validity of the Republican and Democratic primary elections which were held on September 12, 1978 to select said parties' nominees for the position of Attorney General of Maryland. As grounds for said challenge, plaintiff alleged that the District of Columbia, as a federal enclave, is a part of the State of Maryland and that the primary elections should be treated as null and void because the residents of the District were arbitrarily excluded from voting in said elections. The defendants in said suit were the governments of the United States, the State of Maryland, and the District of Columbia, as well as the Attorney General of the United States, the Director of Census, the Attorney General of Maryland, the individual members of the Maryland State Administrative Board of Election Laws, the District of Columbia Corporation Counsel, and the individual members of the District of Columbia Board of Election.[1] By petition of the United States of America, this case was removed to this Court.

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[1]Plaintiff subsequently amended his complaint to name the following additional defendants: the Prince George's County Government, the Prince George's County Attorney, the members of the Prince George's County Board of Supervisors of Elections, the Montgomery County Government, the Montgomery County Attorney, and the members of the Montgomery County Board of Supervisors of Elections.

Attachment
C.A. No. 81-2753
RECEIVED
JAN 8 1980

This is by no means the first time that plaintiff has filed suit seeking a judgment declaring that the District of Columbia should be treated as part of the State of Maryland for purposes of the census report and the registration of voters for state and federal elections. On June 9, 1964, plaintiff filed a similar action in this Court against the Governor and the Secretary of State of Maryland contesting the validity of the 1964 Maryland primary election for United States Senator. Said suit was heard by a three-judge court of this district and resulted in a judgment on the merits denying relief for the reasons stated in a per curiam opinion, Albaugh v. Tawes, 233 F. Supp. 576 (D. Md. 1964). That judgment was subsequently affirmed by the Supreme Court, per curiam, without opinion, in Albaugh v. Tawes, 379 U.S. 27, reh. denied, 379 U.S. 948 (1964).[2]

In 1968, Mr. Albaugh once again filed suit in this Court raising issues similar to those presented in the case at bar. Said case, Albaugh v. Agnew, et al., Civ. No. 19599 (D. Md. 1968), was apparently decided by Judge Harvey by Order dated September 10, 1968, in which he concluded, inter alia, that the complaint was "entirely without legal substance." In 1974, plaintiff herein filed another generally similar action in the United States District Court for the District of Columbia. That case, Albaugh v. Mandel, et al., Civ. No. 74-1282 (D.D.C. 1974), was dismissed by Judge Gesell by Memorandum and Order dated November 19, 1974, in which he held, inter alia, that

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[2]Plaintiff's 1964 action was apparently not the first time that he had brought suit on the issue of whether the District of Columbia is still legally part of the State of Maryland. As the District Court noted in its 1964 per curiam opinion, Mr. Albaugh had "raised the same question several times before in cases in which the merits have not been reached . . ." 233 F. Supp. at 577.

was "barred by the doctrine of res judicata" in [illegible] of Albaugh v. Tawes, supra. Mr. Albaugh unsuccessfully appealed said dismissal to the Court of Appeals of the District of Columbia, No. 74-2110 (D.C. Cir. May 9, 1975) (per curiam). Subsequently, his petition for writ of certiorari was denied by the Supreme Court. 423 U.S. 835 (1975).

Most recently, on March 12, 1976, Mr. Albaugh again filed suit in this Court against the United States and various federal and state officials[3] seeking a judgment declaring that the District of Columbia should be treated as part of the State of Maryland for election law purposes and restraining the certification of the results of the Maryland general election for United States Senator. Albaugh v. United States Government, Civil No. T-76-378 (D. Md. 1976). Judge Thomsen dismissed plaintiff's complaint in an opinion dated May 5, 1976, in which he stated, in relevant part, at 2-3:

> In an effort to avoid the defense of res judicata, raised by defendants herein, plaintiff cites Evans v. Cornman, 398 U.S. 419 (1970), affirming a decision of a three-judge court in this district, Cornman v. Dawson, 295 F. Supp. 654 (1969). That case dealt with the right of persons residing on the grounds of the National Institute of Health, a federal enclave in Montgomery County, Maryland, to vote in Maryland elections, and held that the denial of such right violated the Equal Protection Clause of the Fourteenth Amendment. * * *
>
> There is a real difference between residents of the District of Columbia and NIH residents. Congress has given certain voting rights to residents of the District; for additional rights, they and the plaintiff herein must look to Congress. Albaugh v. Tawes, supra, is still good law, and controls the decision of this case.

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[3]Named as defendants in said action were the United States Government, the Secretary of the United States Senate, the Clerk of the United States House of Representatives, the Secretary of Commerce, and the Chairman of the State Administrative Board of Election Laws.

Judge Thomson's decision was affirmed by the Fourth Circuit, which dismissed Mr. Albaugh's appeal on grounds of res judicata. No. 76-1548 (4th Cir. Dec. 23, 1976) (per curiam).

It would appear that each of the defendants is entitled to invoke either the doctrine of res judicata or the doctrine of collateral estoppel as a defense to this suit. However, in any event, for the reasons stated in the opinions in one or more of the prior cases instituted by Mr. Albaugh, which are discussed supra, Mr. Albaugh's contentions herein are without merit. Accordingly, plaintiff's within complaint, as amended, is hereby dismissed with prejudice.

The Clerk is directed to mail copies of this Memorandum and Order to plaintiff and to counsel of record. It is so ORDERED, this 26th day of December, 1979.

J. Frederick Motz
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|---|
| WILLIAM A. ALBAUGH | ) | |
| Plaintiff | ) | |
| v. | ) | Civil Action No. 81-2753 |
| BRUCE CHAPMAN, et al. | ) | |
| Defendants | ) | |

FILED

DEC 17 1981

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

MEMORANDUM ORDER

Plaintiff's pro se complaint essentially challenges the legality of the 1801 cession of part of Maryland to the United States for the establishment of the District of Columbia. Plaintiff alleges that the illegal cession has resulted in erroneous census reports for Maryland, upon which illegal apportionment and redistricting decisions have been made. As his causes of action he alleges violation of the Voting Rights Act, 42 U.S.C. § 1971 et seq. and numerous constitutional violations. Defendants in this case are Bruce Chapman, Director of the Bureau of Census, U. S. Department of Commerce, the United States Government, the District of Columbia Government and the State of Maryland. Defendants District of Columbia and the State of Maryland have each filed a motion to dismiss.

Plaintiff has filed numerous suits seeking a judgment declaring that the District of Columbia was illegally created and should be treated as part of the State of Maryland for purposes of the census report and the registration of voters. In 1964 plaintiff brought suit in the United States District Court of Maryland and his case was denied on the merits. Albaugh v. Tawes, 233 F. Supp. 516 (D. Md. 1964). That judgment was affirmed by the Supreme Court, per curiam, without

opinion. Albaugh v. Tawes, 379 U. S. 27, reh. denied, 379 U. S. 948 (1964). In a subsequent similar suit in the United States District Court for the District of Columbia, J. Gesell dismissed plaintiff's case on the grounds of res judicata. Albaugh v. Mandel, et al., Civil Action No. 76-1282 (D.D.C., 1976) One of plaintiff's more recent attempts to litigate these issues was an action before the United States District Court for the District of Maryland, William Albaugh v. United States, et al., Civil Action No. R-78-2335. In a well-reasoned opinion which traced in detail the history of plaintiff's litigation of these issues, the Court dismissed the case. (J. Kaufman, Order of December 26, 1979).

This Court also finds that plaintiff's claims are barred by the doctrine of res judicata. Accordingly, it is by the Court this 17th day of December 1981,

ORDERED that this case is dismissed with prejudice.

JOHN L. GIESS
U. S. DISTRICT JUDGE